

Introduced by Senator Ducheny

February 18, 2003

An act to amend Section 3041 of, ~~and to add Section 2654 to,~~ the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

SB 278, as amended, Ducheny. Prisoners.

Existing provisions of law generally regulates the conditions of incarceration of prisoners.

This bill would ~~authorize~~ *direct* the Department of Corrections to ~~administer generic drugs to prisoners when prescribed medications are required~~ *adopt policies and procedures for drug utilization to optimize effectiveness and achieve cost-effectiveness, as specified. The bill would also require the department to report upon the impact of the policies to the Legislature no later than December 1, 2004.*

Existing law, commonly known as the “three strikes” statutes, contained in 2 initiative statutes, requires that if a defendant has been convicted of any felony and it has been pled and proved that the defendant has one or more prior serious or violent felony convictions, as defined, then the court must adhere to specified sentence enhancements to be served consecutively and follow other specified sentencing restrictions. These initiatives provide that amendment of these provisions by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house. Existing provisions of law generally regulate the granting and conditioning of parole.

This bill would provide for release to parole to a medical facility, as specified, in the case of prisoners who are terminally ill, physically or

medically incapacitated, or ~~60 years of age or older and~~ functionally limited, as specified, and who would not pose a threat to public safety.

Because early release to parole for these conditions could result in shortening sentences prescribed pursuant to the three strikes initiative statutes, this bill would effect an amendment of the provisions of the three strikes initiative statutes, and therefore would require a $\frac{2}{3}$ vote of the membership of each house of the Legislature.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 2654 is added to the Penal Code, to read:~~
2 ~~2654. The Department of Corrections is authorized to~~
3 ~~administer generic pharmaceuticals to prisoners as needed when~~
4 ~~prescribed medications are required.~~

5 *SECTION 1. The Department of Corrections shall adopt*
6 *policies and procedures for drug utilization that will optimize*
7 *effectiveness and achieve cost efficiency within the correctional*
8 *system. The department shall adopt best practices standards*
9 *established by recognized medical organizations. At a minimum,*
10 *the best practices shall address the following:*

11 *(a) Utilization and prescription of generic medications.*
12 *(b) Cost-effective policies regarding purchase, utilization, and*
13 *prescription of branded medications.*
14 *(c) Policies and procedures to assure that medications are*
15 *being prescribed consistent for appropriate indications and*
16 *consistent with Federal Drug Administration approval.*
17 *(d) Treatment algorithms for classes of drugs deemed clinically*
18 *indicated and consistent with community standards.*

19 *The department shall report to the Legislature no later than*
20 *December 1, 2004, on the impact of adoption of these policies and*
21 *procedures.*

22 SEC. 2. Section 3041 of the Penal Code is amended to read:
23 3041. (a) In the case of any prisoner sentenced pursuant to
24 any provision of law, other than Chapter 4.5 (commencing with
25 Section 1170) of Title 7 of Part 2, the Board of Prison Terms shall
26 meet with each inmate during the third year of incarceration for the
27 purposes of reviewing the inmate's file, making
28 recommendations, and documenting activities and conduct

1 pertinent to granting or withholding post-conviction credit. One
2 year prior to the inmate's minimum eligible parole release date a
3 panel consisting of at least two commissioners of the Board of
4 Prison Terms shall again meet with the inmate and shall normally
5 set a parole release date as provided in Section 3041.5. The panel
6 shall consist solely of commissioners or deputy commissioners
7 from the Board of Prison Terms. The release date shall be set in a
8 manner that will provide uniform terms for offenses of similar
9 gravity and magnitude in respect to their threat to the public, and
10 that will comply with the sentencing rules that the Judicial Council
11 may issue and any sentencing information relevant to the setting
12 of parole release dates. The board shall establish criteria for the
13 setting of parole release dates and in doing so shall consider the
14 number of victims of the crime for which the prisoner was
15 sentenced and other factors in mitigation or aggravation of the
16 crime. At least one commissioner of the panel shall have been
17 present at the last preceding meeting, unless it is not feasible to do
18 so or where the last preceding meeting was the initial meeting. Any
19 person on the hearing panel may request review of any decision
20 regarding parole to the full board for an en banc hearing. In case
21 of a review, a majority vote of the full Board of Prison Terms in
22 favor of parole is required to grant parole to any prisoner.

23 (b) The panel or board shall set a release date unless it
24 determines that the gravity of the current convicted offense or
25 offenses, or the timing and gravity of current or past convicted
26 offense or offenses, is such that consideration of the public safety
27 requires a more lengthy period of incarceration for this individual,
28 and that a parole date, therefore, cannot be fixed at this meeting.
29 After the effective date of this subdivision, any decision of the
30 parole panel finding an inmate suitable for parole shall become
31 final within 120 days of the date of the hearing. During that period,
32 the board may review the panel's decision. The panel's decision
33 shall become final pursuant to this subdivision unless the board
34 finds that the panel made an error of law, or that the panel's
35 decision was based on an error of fact, or that new information
36 should be presented to the board, any of which when corrected or
37 considered by the board has a substantial likelihood of resulting in
38 a substantially different decision upon a rehearing. In making this
39 determination, the board shall consult with the commissioners
40 who conducted the parole consideration hearing. No decision of

1 the parole panel shall be disapproved and referred for rehearing
2 except by a majority vote of the board following a public hearing.

3 (c) For the purpose of reviewing the suitability for parole of
4 those prisoners eligible for parole under prior law at a date earlier
5 than that calculated under Section 1170.2, the board shall appoint
6 panels of at least two persons to meet annually with each prisoner
7 until the time the person is released pursuant to proceedings or
8 reaches the expiration of his or her term as calculated under
9 Section 1170.2.

10 (d) Notwithstanding subdivision (a) and Section 5076.1, on an
11 emergency basis, and only until December 31, 2003, life parole
12 consideration hearings or life rescission hearings may be
13 conducted by two-person panels consisting of at least one
14 commissioner. In the event of a tie vote, the matter shall be referred
15 to the full board for a decision. It is the intent of the Legislature in
16 enacting this subdivision to allow the board to increase the number
17 of hearings conducted each month to eliminate the backlog of
18 inmates awaiting a parole consideration hearing. The board shall
19 report monthly on the number of hearings conducted in the
20 previous month, the number scheduled in the current and
21 subsequent months, the backlog of cases awaiting a hearing, and
22 progress toward eliminating the backlog. The report shall be made
23 public at a regularly scheduled meeting of the board and a written
24 report shall be made available to the public and transmitted to the
25 Legislature monthly.

26 (e) (1) Notwithstanding any other provision of law, prisoners
27 for whom one or more of the following conditions are met, and
28 who are determined by the ~~Director of Corrections~~ board not to
29 pose a threat to public safety, shall be released to ~~parole~~ *a parole*
30 *placement* at a medical facility ~~operated by or under contract with~~
31 ~~the Department of Corrections~~:

32 (A) The prisoner is terminally ill with an incurable condition
33 caused by an illness or disease that will likely produce death within
34 six months as determined by a physician employed by the
35 department.

36 (B) The prisoner is physically or medically incapacitated by a
37 medical condition that renders the prisoner permanently unable to
38 move without assistance, or permanently unable to perform
39 activities of daily living ~~—such as dressing, eating without~~
40 *assistance, including, but not limited to, dressing, feeding,*

1 ambulating, or maintaining personal hygiene without assistance,
2 or the prisoner is permanently ventilator dependent or dependent
3 upon medical intervention for survival.

4 (C) The prisoner is 60 years of age or older and has a medical
5 condition requiring specialized medical support services which
6 result in substantial functional limitations in four or more areas of
7 major life activity. *that results in the prisoner being permanently*
8 *ventilator dependent or dependent on ongoing medical*
9 *intervention for survival.*

10 (2) The warden or warden's representative shall, at the time of
11 release for those prisoners released to parole under this
12 subdivision, ensure that the prisoner has *applied for any federal*
13 *entitlement program for which the prisoner is eligible, and has in*
14 his or her possession, a discharge medical summary, full medical
15 records, state identification, parole medications, *social security*
16 *number*; and all property belonging to the prisoner that was under
17 the control of the department. Any additional records shall be sent
18 to the prisoner's forwarding address after release to parole.

19 _____
20 CORRECTIONS

21 **Text — Page 5.**
22 _____
23

